

STATE OF MICHIGAN
COURT OF APPEALS

MORTON SAMUEL COX III,

Plaintiff-Appellee,

v

SECRETARY OF STATE,

Defendant-Appellant.

UNPUBLISHED

November 18, 1997

No. 199288

Washtenaw Circuit Court

LC No. 96-007661

Before: Saad, P.J., and O'Connell and Matuzak,* JJ.

PER CURIAM.

Defendant Secretary of State appeals from the circuit court's order granting reinstatement of plaintiff's driver's license. We reverse and reinstate the decision of defendant's hearing officer.

In 1994 defendant revoked plaintiff's driver's license pursuant to MCL 257.303(2)(f); MSA 9.2003(2)(f), due to his 3 prior convictions for operating a motor vehicle while impaired (OWI). Plaintiff left the country following his last OWI conviction. When he returned, he petitioned the Secretary of State's Driver License Appeal Division (DLAD) for reinstatement of his license, citing his complete abstinence from alcohol for the past 8 months. In support of his petition plaintiff presented 2 substance abuse evaluations, the latter one expressing optimism regarding plaintiff's likelihood to remain sober, along with 9 testimonial letters attesting to plaintiff's current sobriety.

The Secretary of State denied plaintiff's request for reinstatement. The DLAD hearing officer noted that plaintiff had not followed the substance abuse counselor's recommended outpatient treatment or AA attendance, yet had still received a favorable evaluation. The hearing officer concluded that, based on the lack of substance abuse counseling or AA involvement since his last OWI conviction, plaintiff's driving record, and the high blood alcohol levels involved in his OWI convictions, the 9-month period of abstinence was not sufficient to find that Petitioner's substance abuse problem was under control.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff appealed to the circuit court, which found that the hearing officer's decision amounted to an abuse of discretion because the officer disregarded the 9 letters supporting the favorable evaluation and "the totality of the record." In reaching this decision, the trial judge pointed out that he knew several of the letter-writers, whom he deemed very credible witnesses to plaintiff's sobriety.

Defendant Secretary of State argues that the trial judge erroneously substituted his own judgment for that of the DLAD hearing officer. We agree.

The circuit court's review of the Secretary of State's hearing officer's decision is limited to the criteria listed in MCL 257.323(6); MSA 9.2023(6). Under MCL 257.303(1)(f)(ii); MSA 9.2003(1)(f)(ii), persons who have 3 or more OWI convictions in a 10-year period are habitual offenders who should be denied a license. Under 1992 AACCS, R 257.313(1)(a)(i), persons designated as habitual offenders bear the burden of rebutting that statutory presumption when seeking a license. Under 1992 AACCS, R 257.313(1)(b), the DLAD hearing officer can require that a petitioner seeking reinstatement of a license completely abstain from alcohol for a period longer than 6 months where the petitioner has had tests revealing a blood alcohol content of over .20%, has 3 or more alcohol-related convictions, or has suffered relapses after attempting to bring their alcohol abuse problems under control. Plaintiff met these criteria: he had 3 prior convictions for OWI, 2 of which were based on blood alcohol levels over .20%. He had been in substance abuse therapy and AA following his first 2 convictions, yet resumed drinking and driving. Plaintiff's first substance abuse evaluation after returning to the United States recommended that he complete outpatient counseling and attend 2 AA meetings per week. However, by the time of the DLAD hearing plaintiff had not attended outpatient treatment or any form of counseling, and had not attended any AA meetings since his last conviction. The hearing officer's finding that plaintiff had not showed that his alcohol abuse problem was under control and likely to remain under control was supported by competent, material, and substantial evidence on the whole record, and was not clearly an abuse or unwarranted exercise of discretion. The hearing officer's determination satisfied the criteria listed in MCL 257.323(6); MSA 9.2023(6), so the circuit court could not set aside the Secretary of State's denial of plaintiff's petition to reinstate his driver's license.

Reversed.

/s/ Henry William Saad

/s/ Peter D. O'Connell

/s/ Michael J. Matuzak